**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**INCOME TAX APPEAL NO.318 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.314 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.317 OF 2007**

The Commissioner of Income-tax
Aayakar Bhavan, Cantonment,
Aurangabad. ..Appellant.

V/s.

Manjara Shetkari Sahakari Sakhar
Karkhana Ltd., Vilasnagar,
Dist. Latur. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.394 OF 2005**
**WITH**
**INCOME TAX APPEAL NO.395 OF 2005**
**WITH**
**INCOME TAX APPEAL NO.396 OF 2005**

The Commissioner of Income-tax -1,
Kendriya Rajaswa Bhavan, 2nd floor,
Gadkari Chowk, Old Agra Road,Nasik-2. ..Appellant.

V/s.

Vasantdada Patil Sahakari Sakhar
Karkhana Ltd., Vithewadi, Tal.
Dist. Nashik. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.418 OF 2005**

The Commissioner of Income-tax-V,
Pratyaksha Kar Bhawan, Dr.Ambedkar,
Bhawan, Near Akrudi Rly. Station,
Pradhikaran, Pune - 411 044. ..Appellant.

V/s.

Shri Vighnahar Sahakkari Sakhar
Karkhana Ltd., Dhalewadi, A/P.
Shiroli (Bk.), Tal. Junnar,
Dist. Pune. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.527 OF 2005**

The Commissioner of Income-tax -1,
B-Wing, 1st floor, PMT Building,
Shankarsheth Road, Swargate,
Pune - 411 037 ..Appellant.

V/s.

Jagadamba Sahakari kakhar Karkhana
Ltd., Rashin, Tal. Karjat, Dist.
Ahmednagar. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.247 OF 2007**

The Commissioner of Income-tax,
Aayakar Bhavan, Cantonment,
Aurangabad. ..Appellant.

V/s.

Siddheshwar Sahakari Sakhar Karkhana
Ltd., Manik Nagar, Tq.Sillod,
Dist. Aurangabad. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.249 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.250 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.251 OF 2007**

The Commissioner of Income-tax -1,
Kendriya Rajaswa Bhavan, 2nd floor,
Gadkari Chowk, Old Agra Road,Nasik-2. ..Appellant.

V/s.

Panzarkan Sahakari Sahakari Sakhar
Karkhana Ltd., Sakri, Dist. Dhule. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.252 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.254 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.255 OF 2007**

The Commissioner of Income-tax
Aayakar Bhavan, Near Holy Cross
High School, Cantonment, Aurangabad ..Appellant.

V/s.

Santh Ekanath Sahakari Sakhar
Karkhana Ltd., Tq. Paithan
Dist. Aurangabad. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.257 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.260 OF 2007**

The Commissioner of Income-tax
Aayakar Bhavan, Near Holy Cross
High School, Cantonment, Aurangabad ..Appellant.

V/s.

Shetkari Sahakari Sakhar Karkhana
Ltd., Killari, Tq.Ausa, Dist. Latur. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.262 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.282 OF 2007**

The Commissioner of Income-tax
Aayakar Bhavan, Near Holy Cross
High School, Cantonment, Aurangabad ..Appellant.

V/s.

Jalna Shetkari Sahakari Sakhar
Karkhana Ltd., Jalna Tal. Jalna
Dist. Jalna. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.263 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.284 OF 2007**

The Commissioner of Income-tax
Aayakar Bhavan, Near Holy Cross
High School, Cantonment, Aurangabad ..Appellant.

V/s.

Godavari Mannar Sahakari Sakhar
Karkhana Ltd., Shankar Nagar, Tq.
Biloli, Dist. Nanded. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.264 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.265 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.300 OF 2007**

The Commissioner of Income-tax-1
Kendriya Rajaswa Bhavan, Gadkari
Chowk, Old Agra Road, Nashik. ..Appellant.

V/s.

Satpuda Tapi Parisar Sahakari
Sakhar Karkhana Ltd., Tal.Shahada
Dist. Dhule. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.267 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.286 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.287 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.288 OF 2007**

The Commissioner of Income-tax-1
Kendriya Rajaswa Bhavan, Gadkari
Chowk, Old Agra Road, Nashik-422 002. ..Appellant.

V/s.

Madhukar Sahakari Sakhar Karkhana
Ltd., Faizpur, Tal. Yawal,
Dist. Jalgaon. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.277 OF 2007**

The Commissioner of Income-tax,
Aayakar Bhavan, Near Holi Cross
High School, Cantonment, Augranbad ..Appellant.

V/s.

Terna Shetkari Sahakari Sakhar
Karkhana Ltd., Dhoki Tal. &
Dist. Jalgaon. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.283 OF 2007**

The Commissioner of Income-tax,
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad. ..Appellant.

V/s.

Kalambar Vibhag Sahakari Sakhar
Karkhana Ltd., Kalambar,
Dist. Nanded. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.285 OF 2007**

The Commissioner of Income-tax,
Aayakar Bhavan, Cantonment,
Aurangabad. ..Appellant.

V/s.

Jai Javan Jai Kisan Sahakari
Sakhar Karkhana Ltd., Nalegaon
Tq. Chakur, Dist. Latur. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.289 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.294 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.325 OF 2007**

The Commissioner of Income-tax -11,
Kendriya Rajaswa Bhavan, 2nd floor,
Gadkari Chowk, Old Agra Road,Nasik-2. ..Appellant.

V/s.

Belganga Sahakari Sakhar
Karkhana Ltd., Tal.Chalisgaon,
Dist. Jalgaon - 425 001. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.291 OF 2007**

The Commissioner of Income-tax -1,
Aayakar Bhavan, Near Holi Cross High
School, Cantonment, Aurangabad. ..Appellant.

V/s.

Kannad Sahakari Sakhar Karkhana Ltd.,
Mahatma Phule Nagar,Kannad, Tq.Kannad,
Dist. Aurangabad. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.292 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.293 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.296 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.305 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.332 OF 2007**

The Commissioner of Income-tax
Aayakar Bhavan, Near Holi Cross High
School, Cantonment, Aurangabad. ..Appellant.

V/s.

Samarth Sahakari Sakhar Karkhana Ltd.,
Wadigodri Tq. Ambad, Dist. Jalna. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.295 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.297 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.299 OF 2007**

The Commissioner of Income-tax,Nasik-1,
Kendriya Rajaswa Bhavan, 2nd floor,
Gadkari Chowk, Old Agra Road, Nasik. ..Appellant.

V/s.

Shirpur Shetkari Sahakari Sakhar
Karkhana Ltd., Shirpur, Dist.Dhule. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.298 OF 2007**

The Commissioner of Income-tax -11,
Kendriya Rajaswa Bhavan, 2nd floor,
Gadkari Chowk, Old Agra Road,Nasik-2. ..Appellant.

V/s.

Chopda Shetkari Sahakari Sakhar
Karkhana Ltd., Tal. Chopda
Dist. Jalgaon. ..Respondent.

**WITH**
**INCOME TAX APPEAL NO.327 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.328 OF 2007**
**WITH**
**INCOME TAX APPEAL NO.329 OF 2007**

The Commissioner of Income-tax,
Aayakar Bhavan Near Holy Cross
English Schoo, Cantonment, Aurangabad ..Appellant.

V/s.

Shankar Sahakari Sakhar Karkhana
Ltd., Waghalwada (Kusumnagar), Tq.
Bhokar, Dist. Nanded. ..Respondent.

Mr.B.M.Chatterjee withy Mrs.P.P.Bhosale i/b.Pankaj Kapoor for appellant.

Mr.S.N.Inamdar with A.K. Jasani for respondent.

**CORAM : F.I.REBELLO AND J.P.DEVADHAR, JJ.**

**JUDGMENT RESERVED ON : 25TH JULY, 2007.**

**JUDGMENT PRONOUNCED ON : 14TH AUGUST, 2007.**

**JUDGMENT (PER J.P.DEVADHAR, J.)**

1. In these group of 47 appeals filed under section 260A of the Income Tax Act, 1961 (‘the Act’ for short), the Commissioner of Income-tax has challenged various orders passed by the Income Tax Appellate Tribunal in the case of different assessees. Counsel on both sides agree that the following substantial questions of law arise in all these appeals, namely :-

1. Whether the Appellate Tribunal was right in law in holding that provisions of Section 40A(2) (a) are not applicable to a co-operative Society ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the additional payment over and above the statutory minimum price (SMP) was cane price and not diversion of profit and as such allowable as business expenditure under section 37(1) of the Income Tax Act, 1961 ?

3. Whether on the facts and in the circumstances of the case cane price / Khodki charges paid by the assessee was not "Bonus" within the meaning of 2(4) of the Maharashtra Co-op. Societies Act, 1960 and it was allowable as business expenditure ?

2. All the aforesaid 47 appeals are admitted on the aforesaid questions of law and by consent of both the parties these group of 47 appeals are heard and finally disposed of by this common Judgment.

3. Although the facts in all these appeals are not in dispute, for better appreciation of the disputes involved herein, we may note few facts in Income Tax Appeal No.318 of 2007. Counsel on both sides agree that the decision in Income Tax Appeal No.318 of 2007 would apply to the remaining appeals as well.

4. The respondent / assessee is a Co-operative Sugar Factory engaged in the manufacture of sugar by utilising sugarcane as raw material.

5. The assessment year involved is Assessment

Year 1992-93.

6. In the assessment year in question, the assessing officer (A.O.) noticed that the assessee had purchased sugarcane from members of the society as well as from non members at a price fixed by the State Government which was higher than the statutory minimum price (SMP) fixed by the Central Government. The A.O. further noticed that the price paid by the assessee to the sugarcane suppliers was more than the sugarcane price paid by Marathwada SSK Ltd. to its suppliers. By comparing the cane sugar price paid in the earlier years in the case of the assessee as well as Marathwada SSK Ltd., the A.O. determined the fair market value of the sugarcane and by invoking Section 40A(2)(a) of the Act, disallowed the amount which was found unreasonable or in excess of the fair market value. According to the A.O., excess cane sugar price paid by the assessee amounted to diversion of commercial profits earned by the assessee and hence not allowable. For the same reasons, the assessing officer disallowed the Khodki charges claimed by the assessee.

7. On appeal filed by the assessee, the C.I.T. (A) upheld the contention of the assessee that section 40A (2) is not applicable to a co-operative society and, therefore, no disallowance of excess sugarcane

price could be made under section 40A (2)(a) of the Act. However, the C.I.T. (A) held that the excess payment of sugarcane price was in the nature of appropriation of profits and the same would be 'bonus' within the meaning of section 2(4) of the Maharashtra Co-operative Societies Act, 1960 ('M.C.S. Act' for short) and such incentive bonus would not be allowable expenditure. For the same reasons the C.I.T. (A) held that the Khodki charges are also liable to be disallowed. The C.I.T. (A) further held that the Khodki charges is an agricultural expenditure and since the assessee is not engaged in the agricultural activity the disallowance of Khodki charges is liable to be upheld.

8. Being aggrieved by the aforesaid order, both the assessee as well as the revenue filed appeals before the I.T.A.T. The president of the I.T.A.T. constituted a special bench to decide the issues arising out of the above two appeals as also appeals in the case of some other assessees. The Special Bench, considered the fixation of sugarcane price in various countries like Australia, Indonesia, USA, Cuba, Mexico, Phillipines, Mauritius, South Africa and Puerto Rico and by its order dated 19/8/2004 (reported in **85 TT J 369**) held that section 40A (2)(b) (ii) is not applicable to the co-operative societies and further

held that price fixation is a legislative function and the payments made to the cane growers at the rate fixed by the State Advise Price (SAP) cannot be disallowed by treating the differential amount between SMP and SAP as appropriation of profits or bonus. Similarly, the Special Bench held that the expenses incurred by the assessee as Khodki charges cannot be disallowed. As per the decision of the Special Bench, the Tribunal has dismissed the appeal filed by the revenue and allowed the appeal filed by the assessee. Challenging the aforesaid order, the revenue has filed these appeals.

9. Thus, the question to be considered in all these appeals are, firstly, whether section 40A (2) of the Act applies to a cooperative society and secondly, whether part of the cane price paid to the sugar cane suppliers and the khodki charges incurred by the assessee could be disallowed on the ground that the said expenditure constitute appropriation of profits / bonus under the provisions of M.C.S. Act, 1960 ?

Regarding question No.1

10. The question as to whether section 40A (2) of the Act applies to a co-operative society or not has been considered by this Court in the case of Shivamrut Doodh Utpadak Sahakari Sangh Maryadit, Akluj. While

dismissing the Tax Appeal No.62 of 1999 filed by the revenue (CIT V/s. Shivamrut Doodh Utpadak Sahakari Sangh Maryadit) on 7/12/1999 this Court confirmed the decision of the Tribunal and held that section 40A (2) of the Act does not apply to a co-operative society.

11. In the case of Shivamrut Doodh Utpadak Sahakari Sangh (supra) the question raised was, whether the words "association of persons" (A.O.P.) in section 40A (2) would include a co-operative society ? It was held that the word ‘A.O.P.’ in Section 40A(2) would not include a cooperative society, because firstly, section 2(19) of the Act defines a co-operative society to mean a co-operative society registered under the Co-operative Societies Act, 1912 or under any other law for the time being in force. Section 40A(2) applies to the persons specifically namely therein and since ‘Cooperative Society’ does not appear in Section 40A(2)(b), the said Section would not apply to a cooperative Society. Secondly, a co-operative society formed on the doctrine of mutuality is entitled to deduction under section 80 P of the Act, whereas, no such deduction is not available to an A.O.P. This clearly shows that under the Income Tax Act, cooperative Society is different from A.O.P. Thirdly, co-operative societies are distinctly referred to in various sections of the Act eg. sections 2(18) (ad), 2

(24) (vii), 27(iii), 36 (1)(ia), 40(ba), 45(3), 80 L(1) (ii), (vi), (via), (viii) (ix), 80P, Explanation 1 (b)(i) to section 139 (1) [prior to Finance Act, 2001] 193 (iib), 194A (3)(i), (v), 269T and 269 (VA). In these circumstances, it was held that under the Income Tax Act 'Co-operative Society' is distinct from 'association of persons' and since the word 'co-operative society' does not appear in section 40A (2) of the Act, disallowance under section 40(A) (2) cannot be made in the case of a co-operative society.

12. Accordingly, in the light of the decision of this Court in the case of Shivamrut Doodh Utpadak Sahakari Sangh (supra), we answer the first question in favour of the assessee and against the revenue.

Regarding question Nos.2 & 3.

13. According to Mr.Chatterjee, learned counsel for the revenue, once the statutory minimum price (SMP) is fixed by the Central Government the assessee is bound to pay that price to the cane growers and any price paid in excess of SMP would not be allowable expenditure. He submitted that the State Advice Price (SAP) is fixed by the State Government based on the particulars submitted by the assessee after finalisation of the accounts and determination of the

profits. Thus, the SAP fixed by the State Government is based on the profits earned by the assessee and, therefore, the differential amount between SMP and SAP would be in the nature of distribution of profits and such a payment which is in the nature of distribution of profits cannot be allowed as business expenditure.

14. Mr.Chatterjee further submitted that payment of cane price in excess of the fair market price would also constitute 'bonus' within the meaning of section 2(4) of the 'MCS Act'. Bonus is nothing but sharing of profits and, therefore, the excess cane price which is in the nature of profit sharing cannot be allowed as business expenditure. In this connection, Mr. Chatterjee relied upon a decision of the Apex Court in the case of **Shri Malaprabha Co-operative Sugar Factory Ltd. V/s. Union of India** reported in **(1994) 1 SCC 648** especially para 92 thereof.

15. For the same reasons, Mr.Chatterjee submitted that the expenditure incurred by the assessee on Khodki charges is also liable to be disallowed. Accordingly, Mr.Chatterjee submitted that the questions raised in the Appeal be answered in favour of the revenue.

16. Mr.Inamdar, learned counsel appearing on

behalf of the assessee while supporting the order passed by the Tribunal, submitted that under the M.C.S. Act and the Bye laws framed thereunder, the assessee is bound to submit particulars at the end of the financial years so as to enable the State Government to fix the SAP. Such particulars furnished at the end of the financial year are not based on determination of profits. He submitted that payment before finalisation of profit is different from payment out of profit. In the present case, the cane price is paid as per the SAP fixed by the State Government. The fact that the SAP is based on the particulars submitted by the assessee cannot be a ground to hold that the price paid to the cane growers is in the nature of distribution of profits or bonus. Referring to the Government of Maharashtra Circular dated 2/4/1985 and the Bye laws of the society, Mr.Inamdar submitted that so long as the State Government share capital is not fully repaid, the State Government was entitled to fix final sugarcane price and the assessee was bound and liable to pay the said price to the cane suppliers irrespective of the fact that the cane suppliers are members of the assessee or not. He submitted that SAP fixed by the State Government was a mandatory direction under section 79A of the M.C.S. Act and the assessee was bound to follow the said direction. Therefore, no disallowance could be made from the cane price paid by

the assessee to its members / non members at a price fixed by the State Government. In this connection, Mr.Inamdar relied upon the decision of the Apex Court in the case of **Pravara SSK Ltd. V/s. CIT** reported in **94 ITR 321 (S.C.)** and the decision of the Apex Court in the case of **Maharashtra Rajya Sahakari Sakhar Karkhana Sangh Limited V/s. State of Maharashtra** reported in **1995 Supp (3) SCC 475.**

17. We have carefully considered the rival submissions. In all these appeals, it is not in dispute that the share capital contributed by the State Government in the case of each assessee has not been fully repaid. It is also not in dispute that under the provisions of M.C.S. Act and the bye laws made thereunder, the State Government is entitled to fix the SAP till the share capital contributed by the State Government is repaid fully. The State Government fixes the final cane price in public interest and it is in the nature of a direction issued by the State Government under section 79A of the M.C.S. Act which is binding on the assessee. Failure to comply with such a direction given by the State Government, inter alia may result in removal of the Managing Committee of the society under section 78 of the M.C.S. Act.

18. The Apex Court in the case of **U.P.Co-op.**

**Cane Unions Federation V/s. West U.P.Sugar Mills Association** reported in **(2004) 5 SCC 430** after reviewing the entire case law on the subject observed in para 39 thus:-

> " These cases clearly lay down that under under the 1966 Order the Central Government only fixes the minimum price and it is always open to the State Government to fix a higher price. Under the enactments made by the State Legislatures, areas are reserved for the sugar factories and the cane-growers therein are compelled to supply sugarcane to them and therefore the State Government has incidental power to fix the price of sugarcane which will also be statutory price. They further lay down that the Cane Commissioner can direct the cane-growers and the sugar factories to enter into agreements for purchase of sugarcane at a price fixed by the State Government and such agreements cannot be branded as having been obtained by force or compulsion.

19. In the light of the aforesaid Judgment of the Apex Court, it is evident that it is the prerogative of the State Government to fix the final cane price in public interest and such a final price fixed by the State Government in the case of each of the assessee which is normally higher than the SMP fixed by the Central Government is binding on each of the assessees.

20. Once it is held that the assessee is bound by the SAP fixed by the State Government and payment is made accordingly, the question is, whether it is open

to the Assessing Officer to make disallowance on the ground that the cane price paid is in excess of the fair market value and make addition of the differential amount between the SAP and SMP in the income of the assessee.

21. The main argument of the revenue is that firstly the SAP fixed by the State Government exceeds the fair market value and hence liable to be disallowed. Secondly the State Advise Price (SAP) is determined on the basis of the price recommended by the assessee after the finalisation of accounts and, therefore, the differential amount between SAP & SMP being appropriation of profits and in the nature of 'bonus' under Section 2(4) of the M.C.S. is liable to be disallowed. There is no merit in this contention, because, under the M.C.S. Act, though the assessee is bound to pay the S.M.P. fixed by the Central Government, the assessee is also bound to pay the final cane price as per the SAP fixed by the State Government. Therefore, where the payment is made to the cane growers as per the directions of the State Government, the assessee cannot be accused of paying to the cane growers in excess of the fair market price. What should be the fair market value to be paid to the cane growers is left to the State Government. The fact that SAP fixed by the State Government is based on the

price recommended by the assessee after the finalisation of the accounts would not constitute appropriation of profits / bonus because, appropriation of profits would arise only after the profits are determined and profits can be determined only after all the expenses incurred for the business are deducted from the gross income. As per the bye-laws framed under the M.C.S. Act, every assessee is obliged to recommend the final cane price after the finalisation of accounts in the respective year. In order to secure better price for the cane growers the scheme evolved by the State Government in the State of Maharashtra is to determine the final cane sugar price after completion of accounts at the end of the year. As noted earlier, the final cane sugar price determined by the State Government is binding and there is no challenge to the SAP fixed by the State Government. Therefore, payment of the final cane sugar price as per SAP fixed by the State Government based on the price recommended by the assessee after the finalisation of accounts cannot be said to be appropriation of profits.

22. Moreover, Section 65 of the M.C.S. Act provides for the mode and the manner of ascertainment and appropriation of profits. The said Section provides that no part of profits shall be appropriated except with the approval of the annual general meeting

and in conformity with the Act, rules and bye-laws. In the present case, neither the profits are determined nor there is any resolution passed in the A.G.M. to distribute profits in the form of higher cane price / bonus. Therefore, in the facts of the present case, the final cane price paid at the rate fixed by the State Government cannot be said to be distribution of profits / bonus.

23. Reliance placed by the revenue on the decision of the Apex Court in the case of Shri Malaprabha Co-operative Sugar Factory (supra), in our opinion is wholly misplaced. In that case, the issue before the Apex Court was whether the ‘statutory minimum price" (SMP) fixed by the Central Government on levy sugar was in accordance with the levy sugar order issued under section 3(3c) of the Essential Commodities Act, 1955. While holding that the S.M.P. fixed by the Central Government is neither arbitrary nor suffers from extraneous considerations, the Apex Court referred to the final cane pricing system adopted in the State of Maharashtra. It was held that in the State of Maharashtra the farmers get profits in the form of additional cane prices which fluctuates widely from factory to factory and the same is of a profit sharing nature. These observations made by the Apex Court cannot be construed to mean that the payments made as

per the final cane price fixed by the State Government constitute appropriation of profits / bonus and make disallowance accordingly.

24. It is pertinent to note that the final cane price fixed by the State Government is paid by the assessee to its members as well as non members. In the case of Maharashtra Rajya Sahakari Sakhar Karkhana Sangh Limited (Supra), the Apex Court has held that the production of sugar being of primary concern, the SAP fixed by the State of Maharashtra is not only binding on the members but also binding on non members who supply sugar cane to the assessee. In these circumstances, the final cane price paid by the assessee as per the SAP fixed by the State Government cannot be said to be excessive or appropriation of profits / bonus and consequently no disallowance could be made in that behalf.

25. Similarly, the Khodki charges are incurred as per the directions of Director of Sugar to clean out the farmers land and to compensate the farmer for the unevenly cut cane sugar at the time of harvesting. This Court in the case of **C.I.T. V/s. Shree Panchganga SSK Ltd.** reported in **254 ITR 572** has held that Khodki charges are incurred for the business purposes and hence the said expenses are allowable.

Accordingly, following the said decision, we answer question Nos.2 & 3 in favour of the assessee and against the revenue.

26. In the result, all the appeals filed by the revenue are dismissed by answering the three questions framed in these appeals in favour of the assessee and against the revenue with no order as to costs.

**(F.I.REBELLO, J.)**

**(J.P.DEVADHAR, J.)**